

EXHIBIT A
part 1 of 2

Name Anthony Totten
Address Correctional Training Facility
P.O. Box 689 (ED-34L)
Soledad, CA 93960
CDC or ID Number H-21049

MC-275

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAR 20 2007

ALAN SLATER, Clerk of the Court

BY: L. MA ~~DEPUTY~~

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

(Court)

ANTHONY TOTTON,

Petitioner

vs.

BEN CURRY (Warden),

Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. M-11277

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction ☐ Parole
- ☐ A sentence ☐ Credits
- ☐ Jail or prison conditions ☐ Prison discipline
- ☒ Other (specify): Parole suitability hearing

1. Your name: Anthony Totten
2. Where are you incarcerated? Correctional Training Facility, Soledad, Calif.
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Attempted murder W/use of a firearm

- b. Penal or other code sections: 664/187 12022.5(a)
- c. Name and location of sentencing or committing court: Orange County Superior Court, Santa Ana, California
- d. Case number: C 82571
- e. Date convicted or committed: 12/3/1991
- f. Date sentenced: 1/3/1992
- g. Length of sentence: Life W/parole in 7 years plus 3 years for GBI
- h. When do you expect to be released? 5 years ago
- i. Were you represented by counsel in the trial court? ☐ Yes. ☐ No. If yes, state the attorney's name and address:

N/A

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

SEE APPENDIX "A" PAGE 6 FOR ANSWER TO 6

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: *who* did exactly *what* to violate your rights at what time (*when*) or place (*where*). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE APPENDIX "A" PAGE 6 FOR ANSWERS TO 6(a), ET SEQ.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

SEE APPENDIX "B" PAGE 13 FOR ANSWERS TO 6(b)

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): **N/A**

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes. ☐ No. If yes, give the following information:

N/A

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

N/A

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

NO ADMINISTRATIVE REVIEW IS AVAILABLE FOR PAROLE DECISIONS

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies. **N/A**

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or **issue** in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: _____
- (2) Nature of proceeding (for example, "habeas corpus petition"): _____
- (3) Issues raised: (a) _____
- (b) _____
- (4) Result (Attach order or explain why unavailable): _____
- (5) Date of decision: _____
- b. (1) Name of court: _____
- (2) Nature of proceeding: _____
- (3) Issues raised: (a) _____
- (b) _____
- (4) Result (Attach order or explain why unavailable): _____
- (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Decision became final on 12/1/2006; received transcript on 1/30/2007

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:

Federal District Court, Northern District (last parole hearing)

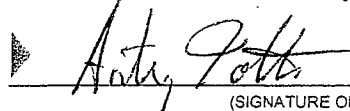
18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This Court has original jurisdiction

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

3-14-07



(SIGNATURE OF PETITIONER)

A P P E N D I X A

Answers to 6, et seq.

Claim I

PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN HE WAS FOUND UNSUITABLE FOR PAROLE FOR THE FOURTH TIME ON IMMUTABLE FACTORS THAT ARE NO LONGER RELIABLE EVIDENCE THAT HE IS A CURRENT THREAT TO PUBLIC SAFETY AND NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AS ESTABLISHED IN HAMDI V. RUMSFELD (2004) 542 U.S. 507, 124 S.Ct. 2633.

Answers to 6 a - facts of the case

On December 3, 1991, Anthony Totten (hereafter Petitioner) was convicted of one count of attempted premeditated first degree murder in violation of Penal Code §§ 664/187,^{1/} with personal use of a firearm in violation of Penal Code § 12022.5(a), and the great bodily injury allegation within the meaning of Penal Code § 12022.7 was found to be true. Petitioner was sentenced to life with the possibility of parole in seven (7) years plus three (3) years for the great bodily injury. The gun use enhancement was stayed.

Petitioner is not challenging his conviction, but the execution of his sentence and reliance on immutable factors to deny parole when he has served beyond the legislatively prescribed punishment for the offense and has an exemplary postconviction record, with a minimum eligible parole date of June 29, 2000 (EXHIBIT 1, HT 1).^{2/}

On August 2, 2006, Anthony Totten (hereafter Petitioner) was found unsuitable for parole by the Board of Parole Hearings (hereafter

1. All codes and regulations are California, unless otherwise noted.
2. References to parole hearing transcript will be noted by HT followed by page number, e.g., (HT 1).

Board) for the FOURTH time. Petitioner received his copy of the parole hearing transcript on January 30, 2007. Petitioner will not belabor the Court with all the facts of the case, but only those facts that relate directly to the reasons given to deny Petitioner parole (EXHIBIT 1, HT 42-46).

Although Petitioner exercised his right not to talk about the commitment offense, he did agree to answer questions asked by the Board and was therefore sworn in (HT 4).

The facts of the commitment offense were read into the record (HT 4-7). In short, Petitioner and his wife, Janet Totten, were having marital difficulties and Petitioner started seeing another woman. In July of 1990, feeling abandoned and confused, not able to make decisions about anything and feeling suicidal, checked himself into U.C.I. Medical Center for depression (EXHIBIT 2, p. 12, Probation Officer's Report). Although Mrs. Totten wanted to continue in the relationship with Petitioner, she did not want to take part in his recovery (Id.). Petitioner filed for divorce. As divorce proceedings advanced the relationship between Mrs. Totten and Petitioner deteriorated and became more strained, with Mrs. Totten, as is too often the case with women in divorce proceedings, started using the children as a weapon, restricting Petitioner's relationship with his children. As the strain of events began to take its toll, Petitioner threatened Mrs. Totten, which resulted in her obtaining a restraining order against him and further restricting contact with his children. Three days before the commitment offense, Petitioner purchased a .22 caliber bolt action rifle.

The commitment offense occurred on October 30, 1991. In short,

taken from this Court's order filed December 15, 2004, denying Petitioner's habeas petition at that time (EXHIBIT 3): "Petitioner entered the vehicle of the victim, who was his wife, with a rifle. She screamed, a scuffle ensued, and two shots were fired in the vehicle. She managed to escape from the car; he followed her and shot her in the back of the head." The next day, on October 31, 1991, Petitioner turned himself in to the Garden Grove Police Department.

Petitioner has "a classification score of 19 and you've never received any 115s" (HT 16). A classification score of 19 is the lowest a life prisoner can obtain, being equal to zero, and 115 is prison argot for a disciplinary report, or, CDC 115. Petitioner has participated in and completed vocational trades or maintained a prison job assignment since imprisonment with "excellent" work reports (HT 16-17). Petitioner works 40-50 a week in the Prison Industry Authority furniture factor, having the highest pay grade (HT 21).

The Board went over the latest psychological evaluation available (HT 21-26). The 2006 Board relied on the 2003 psychological evaluation prepared by Dr. Talbott (EXHIBIT 4). Dr. Talbott writes that Petitioner "had a methamphetamine problem for a few years" (HT 24), and Petitioner believes this contributed to his irrational thinking at the time of the offense (HT 12). The Board continues (Petitioner will quote directly from Dr. Talbott's evaluation): "Though he had been married for seven years, he was also having an affair with another woman, and his wife found out and sued for divorce, taking the children with her. Thus he was under considerable

stress. After having a series of anger-filled meetings with her, he arranged to meet his wife again, this time at a hospital" (EXHIBIT 5, p. 3, emphasis added; HT 24).

Dr. Talbott continues, Petitioner "finished by saying that he was remorseful. He had some of the right answers for my questions and seemed to be on the road to getting his thinking straight (HT 25). In assessment of dangerousness, it was Dr. Talbott's opinion that Petitioner "will continue to be a low risk for violence within the prison setting. At this time, however, it seems less clear that he will be a low risk in the free community. (This based on) "his still seemingly self-centered view of his actions suggests that his interpersonal maturity is somewhat limited" (EXHIBIT 4, p. 4; HT 25). Dr. Talbott's evaluation was three (3) years old.

Related evidence in Petitioner's file before the Board, was Petitioner's 2002 psychological evaluation prepared by Dr. Rueschenberg, Forensic Psychologist (EXHIBIT 5). After taking several risk factors into consideration, including "imperically based risk assessment procedures (which) are the most accurate and valid method for estimating future risk for violence in the community" (EXHIBIT 5, p. 5), it was Dr. Rueschenberg's opinion that Petitioner is "a low-to-moderate risk for violence in the community...steadily diminishing over time" (Id.). In his conclusion, it was Dr. Rueschenberg's expert opinion (EXHIBIT 5, p. 6):

"Before the index offense, he was experiencing very stressful life events. He started having an extramarital affair and he became separated from his wife who left him with their children....[h]e started abusing methamphetamine more heavily, and his emotional state deteriorated, with Mr. Totten becoming seriously depressed and suicidal. He then exercised very poor judgment, purchasing a firearm and bringing it with him when he decided to confront his wife. The index offense appears to have been a crime of

affective violence, with Mr. Totten acting spontaneously in the midst of a heated marital conflict.

"Mr. Totten does not seem to be an individual who is normally prone to violence and he is not criminally oriented. The commitment offense is his only conviction, and there is no documentation of violent behavior, or other major adjustment problems, while he has been in prison."

Moreover, Petitioner's Life Prisoner Evaluation Report prepared by correctional experts in 2004 (EXHIBIT 6), concisely stated that Petitioner would "pose a low degree of threat to the public at this time, if released from prison" (EXHIBIT 6, p. 7). The LPER further elaborates that the motive for the offense was being distraught over the marital turmoil.

A letter opposing parole was submitted by the Huntington Beach Police Department (HT 27-29), and the Orange County District Attorney opposed parole (HT 32-36), both opposing parole on immutable factors of the offense, and the deputy district attorney characterizing the offense as a "planned execution" (HT 34).

In Petitioner's closing statement he expressed his remorse for the victim and pointed out that he was out on bail during trial and until sentencing without incident (HT 40).

D E C I S I O N

In concluding that Petitioner is "not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison" (HT 42), the 2006 Board relied on: (1) the commitment offense, being "carried out in an especially cruel and callous manner..carried out in a dispassionate and calculated manner intended to be an execution style murder" (HT 42), "the motive for this crime is inexplicable" (HT 45), the Board "believes your still in denial about the causative factors

in the relationship with you and your wife (HT 46); (2) Dr. Talbott's psychological evaluation "is not totally supportive of release" (HT 44); and (3) "opposition to finding of parole suitability specifically by the district attorney of Orange County" (HT 44).

Petitioner was deferred two years for the same reasons as being found unsuitable for parole. The 2006 Board did order a new psychological evaluation for Petitioner's 2008 hearing, which should have been done prior to this hearing, which the Board normally does, postponing the hearing for a new psychological evaluation.

C O N C L U S I O N

Based on the foregoing facts, court records in this case, and the attached memorandum of law, it is requested that the Court order the respondent to show cause why relief should not be granted and the Board's 2006 decision to deny Petitioner parole be vacated and the Board conduct a new hearing in accord with due process and any instructions given by the Court.

Date: 3-14-07

Respectfully submitted,

Anthony Totten
Anthony Totten
Petitioner in pro per

V E R I F I C A T I O N

I, Anthony Totten, declare under penalty of perjury that I have read the foregoing facts and hereby state them to be true and correct, and that the exhibits attached hereto in support of the facts are true copies of the original documents, doing so this 14th day of March, 2007 at Soledad, California.

Anthony Totten
Anthony Totten
Petitioner in pro per

P R A Y E R F O R R E L I E F

I, Anthony Totten, hereby state that I have no other plain or speedy remedy save habeas corpus, and therefore pray that this Honorable Court will:

1. Order the respondent to show cause why the writ should not be granted;
2. Appoint counsel to protect the rights of Anthony Totten against the weight and resources of the state;
3. Declare the rights of the parties;
4. Order discovery and/or an evidentiary hearing as needed to further develop the facts of the case;
5. Allow counsel to orally argue the case before the Court;
6. Grant the writ of habeas corpus; and
7. Grant any other relief in the furtherance of justice.

Date: March 14, 2007

Respectfully submitted,

Anthony Totten
Anthony Totten
Petitioner in pro per

A P P E N D I X B
M E M O R A N D U M O F L A W

Claim I

PETITIONER'S RIGHT TO DUE PROCESS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN HE WAS FOUND UNSUITABLE FOR PAROLE FOR THE FOURTH TIME ON IMMUTABLE FACTORS THAT ARE NO LONGER RELIABLE EVIDENCE THAT HE IS A CURRENT THREAT TO PUBLIC SAFETY AND NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE AS ESTABLISHED IN HAMDI V. RUMSFELD (2004) 542 U.S. 507, 124 S.Ct. 2633.

I N T R O D U C T I O N

Petitioner Anthony Totten has been imprisoned for fourteen (14) years on a sentence that imposes a seven (7) year minimum with a legislatively prescribed punishment of eleven (11) years (California Code of Regulations, Title 15, (hereafter Cal. Code Regs., tit. 15), § 2403(d) (prior relationship "which contributed to the motivation for the attempted murder" and the victim "suffered major injuries"). With conduct credits, Petitioner is at the upper range if he would have been convicted of second degree murder. This habeas petition is to give meaning to the legislatively prescribed punishment for the proportionality of punishment for the commitment offense.

Answers to 6 b - supporting cases and authorities

- A. The United States Supreme Court has Held that the Standard of Proof at the Executive Level in Administrative Hearings is A Preponderance of the Evidence and Judicial Review is thereafter Some Evidence.

Recently, the Supreme Court opined in Carey v. Musladin (2006) 549 U.S. ___, 2006 DJDAR 16061, 16064 (DJDAR 12/12/06), plurality opinion, internal citations omitted:

"Virtually every one of the Court's opinions announcing a new application of a constitutional principle contains some explanatory language that is intended

to provide guidance to lawyers and judges in future cases. It is quite wrong to invite state court judges to discount the importance of such guidance on the ground that it may not have been strictly necessary as an explanation of the Court's specific holding in the case. 'As a general rule, the principle of stare decisis directs us to adhere not only to the holdings of our prior cases, but also their explanations and the governing rules of law'; 'Although technically dicta, ... an important part of the Court's rationale for the result that it reache[s] is entitled to greater weight...'. "

Thus, the principles and instructive language of United States Supreme Court decisions is controlling.

In 1985, in an ambiguous decision, the United States Supreme Court first applied the "some evidence" standard to prison disciplinary hearings (Superintendent v. Hill (hereafter Hill) (1985) 472 U.S. 445). The High Court held that all "prison administrators" needed for a determination of guilt was "some evidence." In 1988 the California Supreme Court adopted the "some evidence" as a standard of proof in the context of parole rescission hearings (In re Powell (1988) 45 Cal.3d 894, 904 [the due process clause is satisfied as long as there was "some basis in fact" and "some evidence" to support the Board's findings]). Thereafter the Board took that to mean decisions to deny parole only need be supported by "some evidence," some evidence being the standard of proof. In 2002 the California Supreme Court gave "some evidence" as a standard of proof in parole suitability decisions a life of its own by holding that all the Executive (Board or Governor) needs to support a decision to deny parole is "some evidence" (In re Rosenkrantz (2002) 29 Cal.4th 616, 655-661). Thus, not only was judicial review conducted under the "some evidence" standard, but all the Executive decision needed as a standard of proof was a mere "some evidence."

Petitioner asks, logically: If the standard of proof is "some evidence," and the standard of judicial review is "some evidence,"

how then does the "some evidence" standard apply itself?

Hill, supra, 472 U.S. 445, was ambiguous as to when the "some evidence" standard applied -- at the administrative decision level, or upon judicial review? That ambiguity was clarified in the recent decision of Hamdi v. Rumsfeld (2004) 542 U.S. 507, 124 S.Ct. 2633, 2651, the High Court holding that the "'[some evidence]' standard therefore is ill suited to the situation in which a habeas petitioner has received no prior proceedings before any tribunal and had no prior opportunity to rebut the Executive's factual assertions before a neutral decisionmaker." The Executive is not a "neutral decisionmaker" (In re Dannenberg (2005) 34 Cal.4th 11061, 1105, dissenting opinion [the Executive has "little to gain and potentially much to lose by granting parole, and accordingly, the incentive to give only pro forma consideration to the parole decision is strong"]).

Hamdi v. Rumsfeld, supra, 542 U.S. 507, 124 S.Ct. 2633, is United States Supreme Court precedent clearing up the ambiguity in Hill that the standard of proof at the Executive level is "a preponderance of the evidence" and judicial review is then "some evidence," thus it is the law of the land (Yarborough v. Alvarado (2004) 541 U.S. 652, 664 [AEDPA does not require that state and federal courts to wait for nearly identical factual case before a legal rule must be applied]), nullifying In re Rosenkrantz, supra, 29 Cal.4th 616, on the holding of "some evidence" as a standard of proof.

Moreover, although a parole suitability hearing is actually a sentencing hearing (In re Roberts, 36 Cal.4th 575, 586, 587-590 (2005)), transferring the formal pronouncement of the sentence from a court to an Executive agency, "the existence of this power does

not imply a further power in the state to immunize its acts, through an administrative agency, from the strictures of the Fourteenth Amendment" (Sturm v. California Adult Authority (9th Cir. 1967) 395 F.2d 446, 449, Browning J. concurring). The Board being bound by United States Supreme Court precedent, Petitioner had a constitutional guarantee to have his parole suitability determined by "a preponderance of the evidence" standard of proof, not a mere "modicum of evidence," violating his right to due process.

If international terrorists who are enemy combatants of the United States are entitled to "a preponderance of the evidence" as the standard of proof at the administrative level of an Executive decision, are not state prisoners who not only have an expectation of parole but are eligible for parole, entitled to at least the same?

Whether by a preponderance of the evidence or some evidence, the findings by the Board are not supported by the evidence that Petitioner is a current threat to the public.

B. Petitioner has Satisfied the Legislatively Prescribed Punishment for His Commitment Offense and the Commitment Offense is Therefore No Longer Reliable Evidence of Petitioner's CURRENT Threat to Public Safety.

It was recently decided in the recent precedent setting case of In re Lee (2006) 143 Cal.App.4th, 49 Cal.Rptr.3d 931, 936 [petition for review denied, request for depublication denied 2/7/07]:

"The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release unreasonably endangers public safety. (Cal. Code Regs. tit. 15, § 2402, subd. (a) [parole denied if prisoner 'will pose an unreasonable risk or danger to society if released from prison'], see e.g. In re Scott (2005) 133 Cal.App.4th 573, 595 ['The commitment offense can negate suitability [for parole] only if circumstances of the crime...rationally indicate that the offender will present an unreasonable public safety risk if released from prison'], but see In re Lowe (2005) 130 Cal.App.4th 1405 [suggested 'some evidence' applies to the factors, not dangerousness].) Some evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety." (Emphasis in original.)

The Lee court continued at 939: "Lee's crimes have little, if any predictive value for future criminality. Simply from the passing of time, Lee's crimes almost 20 years ago have lost much of their usefulness in foreseeing the likelihood of future offenses than if he committed them five or ten years ago. (In re Scott, [2005], 133 Cal.App.4th 573, 595 [past crime's value for predicting future crime diminishes over time]).

Petitioner was sentenced to life with the possibility of parole in seven years (Penal Code § 3046(a)(1)). To cure the mischief of abuse of discretion and disparate punishment for similar crimes committed under similar circumstances under the indeterminate sentencing law, Penal Code § 3041 was amended on July 1, 1977, repealing the indeterminate sentencing law and implementing the Uniform Determinate Sentencing Act of 1976 (UDSA). Penal Code § 3041(b) mandated that a release date be set one year prior to the minimum term, unless the Board determines that "the timing and gravity of the current convicted offense...is such that consideration of the public safety requires a more lengthy period of incarceration...." Penal Code § 3041(a) mandates "[t]he release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public." In compliance with this legislative mandate, the parole authority promulgated guidelines in the Cal. Code of Regs., tit. 15, § 2400, et seq. Most relevant: "A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public" (Cal. Code Regs., tit. 15, § 2401).

Taking the facts and circumstances of various life offenses into consideration, and different common manners in executing the offenses in gravity and magnitude, uniformity, and threat to public safety, the Board implemented Cal. Code Regs., tit. 15, § 2403(b-f). "With respect to persons sentenced to indeterminate terms, the purpose of punishment is satisfied by the requirement of service of a minimum term before eligibility for parole" (In re Morrall (2002) 102 Cal.App.4th 280, 292). When penal statutes have various indeterminate sentences of 7 years to life, 15 years to life, 20 years to life, and 25 years to life, the minimum fixed years has to mean something as does the corresponding legislatively prescribed matrices, otherwise all indeterminate sentences could simply be 1 year to life and the Board arbitrarily decide how much punishment is enough punishment, which is exactly the mischief the an indeterminate sentence under the Uniform Determinate Sentencing Act was to cure. It appears, however, the old adage "the more things change the more they remain the same" has never been more true as it is with the arbitrariness of the Board today in the politically driven arena of parole. The legislatively prescribed punishment for the gravity and magnitude of Petitioner's offense is 11 years (Cal. Code Regs., tit. 15, § 2403(d)(II-C) [the victim was Petitioner's wife who contributed to the motive and her injuries were major]). That has to mean something. To be found suitable years after the uniform term, then the term fixed in accord to that term, is absolutely meaningless and nothing short of a legal fiction, a mere illusion of proportionality and uniformity.

While the commitment offense may "initially" justify a denial

of parole continued use of the offense when the prisoner has demonstrated exemplary postconviction behavior may violate due process (Biggs v. Terhune (9th Cir.2003) 334 F.3d 910, 916; Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063, 1081; In re Scott II (2005) 133 Cal.App.4th 573, 595; In re Shaputis (2005) 135 Cal.App.4th 217, 231; and the precedent setting case of In re Lee, supra, 49 Cal.Rptr.3d, at 940 ["First, the board and Governor must focus their parole decisions on whether a prisoner continues to pose an unreasonable risk to public safety." (and at 941) "To deny parole, the reason must relate to a defendant's continued risk to public safety"])).

When a prisoner, however, has exceeded the matrix for his or her commitment offense, as Petitioner, then punishment for the offense has been satisfied and parole consideration must be on other factors, such as postconviction behavior. This is in complete accord with the offense not being viewed in a vacuum as though it is current, but is to be placed into perspective relative to time, "entailing primarily what a man is and what he may become rather than simply what he has done" (Greenholtz v. Inmates of Nebraska Penal Complex (1979) 442 U.S. 1, 10). See also Biggs v. Terhune, supra, 334 F.3d, at 915; Irons v. Carey (9th Cir. 2007) ___ F.3d ___, slip opinion, p. 2469 (3/6/2007); Sanchez v. Kane (N.D. Cal. 2006) 444 F.Supp.2d 1049, 1062; Rosenkrantz v. Marshall, supra, 444 F.Supp.2d 1063, 1084-1086; Martin v. Marshall (N.D. Cal. 2006) 431 F.Supp.2d 1038, 1047). The distinction made by the Ninth Circuit in Irons, "[s]pecifically, in Biggs, Sass, and here, the petitioner had not served the minimum number of years to which they had been sentenced

at the time of the challenged parole denial by the Board. Biggs, 334 F.3d at 912; Sass, 462 F.3d at 11125" (Irons v. Carey, supra, slip opinion, p. 2481). Irons is instructive (Id., at 2482).

Unlike Sass who had seven prior drunk driving convictions that went unpunished and a drunk driving related second degree murder; thus, "the gravity of his convicted offense in combination with his prior offenses" (Sass v. California Board of Prison Terms (9th Cir. 2006) 461 F.3d 11123, 11129), and Irons, after an argument retrieved a gun and after shooting his victim 12 times, stabbed him when he complained of being in pain, then wrapping him in a sleeping bag then disposing of the body in the bay after 10 days (Irons v. Carey, supra, slip opinion, p. 2473), this was Petitioner's only offense and after a single shot fled the scene.

In Petitioner's case, the offense being domestic in nature, situational and an aberration in his life, 15 years after the commitment offense, six (6) years beyond the minimum term, the minimum term having been satisfied in 2001, Petitioner therefore exceeding the legislatively prescribed punishment for his offense, there is no evidence Petitioner is a current threat to public safety, the commitment offense no longer having an "indicia of reliability" (Biggs v. Terhune, supra, 334 F.3d, at 915). The continued reliance on the offense to deny Petitioner parole violates his right to due process.

////////

////////

////////

////////

C. The Factors of the Commitment Offense Are Not Supported by the Evidence.

In finding Petitioner unsuitable based on the commitment offense, the Board found the offense was "carried out in an especially cruel and callous manner...dispassionate and calculated manner intended to be an execution style murder" (HT 42) and "the motive for this crime is inexplicable" (HT 45).

Firstly, finding the motive for the offense to be "inexplicable" clearly demonstrates how disingenuous the Board is. The motive for this offense, divorce proceedings, jealousy, the wife using the children as a weapon, anger, resulting in extreme stress are such common occurrences in today's society that the mixture has become a sad, but very real motive for spousal murder that "[e]ven law abiding citizens can understand this motive" (In re Fuentes (2005) 135 Cal.App.4th 1152, 37 Cal.Rptr.3d 426, 433). The forensic experts who evaluated Petitioner understood the motive (EXHIBIT 5, p. 4), and the correctional experts understood the motive (EXHIBIT 6, p. 7), so how is it that parole commissioners who are supposed to be trained in determining parole suitability are unable to understand it? Moreover, simply: "An 'inexplicable' motive, as we understand it, is one that is unexplained or unintelligible, as where the commitment offense does not appear to be related to the conduct of the victim and has no other discernible purpose" (In re Scott I (2004) 119 Cal.App.4th 871, 893; Rosenkrantz v. Marshall, supra, 444 F.Supp.2d, at 1082).

Secondly, the offense was not "carried out in an especially cruel and callous manner...dispassionate and calculated manner intended to be an execution style murder" (HT 42). To make this

finding, the Board would have to prove that the victim was made to suffer in some exceptional way (In re Scott I, supra, 1119 Cal.App.4th, at 892; In re Smith (2003) 1114 Cal.App.4th 343, 366-367; Rosenkrantz v. Marshall, supra, 444 F.Supp.2d, at 1082-1083). Moreover, there is zero evidence that Petitioner intended to murder his wife "execution-style." Any such finding is pure speculation. The only item Petitioner had on him at the time of the offense was the rifle, no handcuffs, no duct tape, no rope, no blindfold, absolutely nothing that would indicate that he planned to murder his wife "execution style." No doubt the Deputy District Attorney's argument to the Board, characterizing the offense as a "planned execution" (HT 40) influenced this finding by the Board.

Most importantly, the Board must provide Petitioner "an individualized consideration of the specified criteria and cannot be arbitrary or capricious" (In re Rosenkrantz, supra, 29 Cal.4th, at 677); and "[a]ll relevant, reliable information available to the panel shall be considered in determining suitability for parole" (Cal. Code Regs., tit. 15, § 2402(b)). Petitioner's "'motivation' for the offense tends to show suitability when it was 'the result of significant stress in his life, especially if the stress has built up over a long period of time'" (Id., § 2402(d)(4)). The forensic evidence before the Board, both Dr. Talbott's evaluation (EXHIBIT 5, p. 3 [Petitioner "was under considerable stress"]) and Dr. Rueschenberg (EXHIBIT 5, p. 6 [Petitioner "was experiencing very stressful life events"]), and correctional experts (EXHIBIT 6, p. 7 [Petitioner was "distraught over the marital turmoil"]), are in accord, Petitioner was experiencing severe stress at the time

of the offense. While the Board found the motive to be "inexplicable," "that conclusion was not only unjustified by the evidence but was reached without consideration of 'undisputed evidence [Petitioner] committed his offense while under emotional stress [which] should have been, but was not, considered in his favor.' (Scott I, supra, 119 Cal.App.4th at p. 890, fn. 9" (In re Scott II, supra, 133 Cal.App.4th, at 596; Rosenkrantz v. Marshall, supra, 444 F.Supp.2d, at 1082; In re Weider (2006) ____ Cal.App.4th ____, 2006 DJDAR (12/6/06) 15795, 15801 c. 2-15802 c.1) ["The regulations requiring the Board to consider the role that such stress may have played in the commission of the crime reflects the law's awareness of human nature...it does not appear the Board considered this evidence at all. This it is bound to do"])). See also In re Scott II, supra, 133 Cal.App.4th, at 596; In re Lee, supra, 49 Cal.Rptr.3d, at 939).

Petitioner was denied his right to due process in that the Board failed to consider the material evidence that Petitioner was under considerable stress when he committed the offense, resulting in an arbitrary decision.

D. Psychiatric Evaluations Relating to Predicting Dangerousness are not Reliable Evidence of Current or Future Dangerousness.

In finding Petitioner unsuitable for parole, the Board relied on Dr. Talbott's psychological evaluation as "not being totally supportive of release" (HT 44), but never stated why it was not supportive of release, being totally conclusory and unsupported by any evidence.

Petitioner, nor the Court, should have to guess what the Board was relying on, but for the sake of argument, let us guess the Board

was relying on Dr. Talbott's statement to the effect that Petitioner "will continue to be a low risk for violence within the prison system. At this time, however, it seems less clear that he will be a low risk in the free community. In particular, his still seemingly self-centered view of his actions suggests that his interpersonal maturity is somewhat limited" (EXHIBIT 4, p. 4). Being self-centered, even narcissistic, does not make one a threat to public safety. If that were the case many people, including doctors, preachers, lawyers and even judges should be locked up immediately. The reason Dr. Talbott writes what he does is only because Petitioner refuses to talk about the commitment offense, Dr. Talbott writing, "I had to work on getting him to talk about his thinking about how his crime affected other" (EXHIBIT 4, p. 4). This is not evidence that Petitioner is a current threat to public safety. In fact, predictions of dangerousness, or even not being dangerous, are pretty much meaningless. As opined in In re Scott II, supra, 1133 Cal.App.4th, at 595 fn 9:

"It is worth noting, as our Supreme Court (People v. Murtishaw (1981) 29 Cal.3d 733, 768 []. disapproved on other grounds in People v. Boyd (1985) 38 Cal.3d 762 []), that a large number of legal and scientific authorities believe that, even where the passage of time is not a factor and the assessment is made by an expert, predictions of future dangerousness are exceedingly unreliable. (citations to academic research.) According to a Task Force of the American Psychiatric Association, '[n]either psychiatrists nor anyone else have demonstrated an ability to predict future violence or dangerousness. (Am.Psych.Assn., Task Force Report 8, Clinical Aspect of the Violent Individual (1974) at p. 28.) As our Supreme Court has also noted, 'the same studies which proved the inaccuracy of psychiatric predictions [of dangerousness] have demonstrated beyond dispute the no less disturbing manner in which such prophecies consistently err: they predict acts of violence which will not in fact take place ('false positives'), thus branding as 'dangerous' many persons who are in reality totally harmless.[Citation.]' (People v. Burnick (1975) 14 Cal.3d 306, 327 [])."

See also In re Elkins, supra, 50 Cal.Rptr.3d, at 520, reaffirming Scott.

The only reliable predictor of future behavior is recent past behavior as it relates to preconviction behavior. Unproved hearsay allegations (EXHIBIT 2, pp. 6-8; 115-118) are not evidence, and Petitioner will not discuss nor answer any questions about the incident or the commitment offense.

Denying Petitioner parole on the factor that Dr. Talbott's evaluation wasn't "totally supportive of parole" was arbitrary, especially in light of the fact that the Board selectively ignored psychiatric evidence that Petitioner committed the offense under "considerable stress" (EXHIBIT 4, p. 3), "experiencing very stressful life events" (EXHIBIT 5. 6), when the regulations, as argued supra, provide that committing the offense under extreme stress mitigates the offense and is a factor favoring suitability for parole.

E. The Board Has An Underground Policy to not Find Any Life Prisoner Suitable for Parole that Exercises His or Her Constitutional and Statutory Right to not Discuss the Commitment Offense.

In the Fifth Amendment guarantee for a defendant not to have to testify against himself, lies the same guarantee in Penal Code § 5011(b) ["The Board of [Parole Hearings] shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed."] This guarantee, in theory, is also found in the Board's regulations: "The board shall not require an admission of guilt to any crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner" (Cal. Code Regs., tit. 15, § 2236). Moreover, "a prisoner's refusal to admit participation in the crime on matters of conflicting evidence

does not necessarily constitute unsuitability for parole" (In re Caswell (2002) 92 Cal.App.4th 1017, 1033), nor "a prisoner's 'minimization' of his involvement in the crimes is sufficient" (Id.).

Petitioner, like many similarly situated prisoners, refuses to discuss the commitment offense for the very reasons cited in In re Scott II, supra, 133 Cal.App.4th, at 601: "A parole hearing does not ordinarily provide a prisoner a very good opportunity to show his offense was not committed 'in an especially heinous, atrocious or cruel manner,' even if such evidence exists and the prisoner is willing to run the risk his effort to make such a showing will be seen as unwillingness to accept responsibility and therefore evidence of unsuitability"; see also In re Elkins, supra, 50 Cal.Rptr.3d, at 520. Petitioner accepted responsibility from the start, surrendering himself to authorities the next day. Petitioner presented his case at trial, and will not retry the case before a politically charged body that twists everything around and puts words in a prisoner's mouth. It is that simple. Any attempt to try to correct the record would only be seen as not accepting responsibility or making excuses. Thus, Petitioner accepts the facts of the offense however the Board or Court wants to interpret them.

In 2006, the year of Petitioner's parole hearing in question, to Petitioner's knowledge, the Board did not find any prisoner suitable for parole who did not discuss the commitment offense. Also, to Petitioner's knowledge, in 2003, the one year Petitioner has information for, in suitability findings that were made, .51 percent were found suitable for parole, with some Commissioners finding suitability when the offense was not discussed and others

not doing so, making the use of the statute and regulation arbitrary. Petitioner believes, from her previous record as a Commissioner, that Carol Bentley, who read the decision in Petitioner's case, has never found any prisoner suitable for parole who refused to talk about the offense, and moreover, she has never found any prisoner suitable for parole in which a woman was the victim.

Petitioner does know this, and believes it to be true, pursuant to "Petitioner's Brief In Support Of Habeas Corpus Relief" in Coleman v. Board of Prison Terms, United States District Court, Eastern District of California, Case No. CV S 96-0783 LKK PAN, in a deposition by then Chairman Gillis, at page 99:9-12, Mr. Gillis stated that when a prisoner invokes his right not to discuss the offense it "does not help in the decision-making.... It does not give the panel any insight as to the suitability and those kind of things." And, Id. at 100:14-19, explaining burden of proving suitability is on the prisoner, "If the inmate does not choose to accept that responsibility to talk about remorse or the other issues that we need to discuss, ... it's the inmate that opts to do that." At Id. 102:7-15, Chairman Gillis essentially stated that if a prisoner chooses not to discuss the commitment offense he could not be found suitable for parole.

The only way this claim can be intelligently decided is after an EVIDENTIARY HEARING to garner evidence and testimony of the Board's current policy of not granting parole when a prisoner exercises his or her right not to discuss the offense. Does the Board have an underground policy to not grant parole when the prisoner exercises his or her right not to discuss the offense? The record will clearly demonstrate that Carol Bentley never grants parole when the prisoner

does not discuss the commitment offense, or when the victim is a woman. Moreover, at Petitioner's second parole suitability hearing he had two male Commissioners, although finding Petitioner unsuitable for parole, deferred him only one year, while all subsequent hearings were conducted by female Commissioners, and although nothing changed accept more time between the offense and the hearings and more years of exemplary behavior, the female Commissioners after denying parole, deferred Petitioner the maximum, two years, demonstrating a bias and arbitrary application of the decision-making process.

The Board's underground policy to not grant parole when a prisoner exercises his right to not discuss the offense violated Petitioner's right to due process.

Petitioner respectfully requests an EVIDENTIARY HEARING to garner evidence of the Board's current underground policy of not granting parole when a prisoner refuses to discuss the offense, and to prove that the grant rate in 2006 of prisoners who exercised their right not to discuss the offense was virtually zero percent.

C O N C L U S I O N

WHEREFORE, in that Petitioner has exceeded, not only his minimum term, but the legislatively prescribed punishment for the facts and circumstances of his offense, and his postconviction record is exemplary and zero evidence that he is a CURRENT threat to public safety, it is respectfully requested that the Court order the respondent to show cause why the writ should not be granted.

Date: 3-14-07

Respectfully submitted,



 Anthony Totten
 Petitioner in pro per

EXHIBIT "1"

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

COPY
INMATE

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number H-21049

ANTHONY TOTTEN)
_____))
_____)

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

AUGUST 3, 2006

11:22 A.M.

PANEL PRESENT:

Sandra Bryson, Presiding Commissioner
Carol Bentley, Deputy Commissioner

OTHERS PRESENT:

Anthony Totten, Inmate
Anthony Hall, Attorney for Inmate
Paul Chrisopoulos, Deputy District Attorney
CORRECTIONAL OFFICERS UNIDENTIFIED

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Kendra Rose

House of Scribes

INDEX

	<u>PAGE</u>
Proceedings	1
Case Factors.	4
Pre-Commitment Factors.	9
Post-Commitment Factors	18
Parole Plans.	26
Closing Statements.	33
Recess.	42
Decision.	43
Adjournment	49
Transcriber Certification	50

P R O C E E D I N G S

1

2 PRESIDING COMMISSIONER BRYSON: And the
3 checklist got as far as your desk. All right. Are we
4 on record?

5 DEPUTY COMMISSIONER BENTLEY: Yes, we are.

6 PRESIDING COMMISSIONER BRYSON: This is a
7 subsequent parole consideration hearing for Anthony
8 Totten, CDC number H, Henry, 21049. The date is
9 August 3rd, 2006, and the time is 11:22. We're
10 located at California Training Facility, Soledad. The
11 inmate was received January 13th, 1992 from Orange
12 County. The life term began June 29th, 1993. The
13 minimum eligible parole date, June 29th, 2000. Case
14 number C, Charles, 82571, count one, the controlling
15 commitment offense, Penal Code -- thank you -- 664,
16 187 attempted murder first, and Penal Code 12022.7,
17 inflicting great bodily injury for which the inmate
18 received a term of life plus three years. This
19 hearing is being recorded. For the purpose of voice
20 identification, each of us will state our first and
21 last names, spelling the last name. When it is your
22 turn, sir, after you spell your last name, please
23 state your CDC number. I will start and then go to my
24 left. Sandra Bryson, B-R-Y-S-O-N, Commissioner, Board
25 of Parole Hearings.

26 DEPUTY COMMISSIONER BENTLEY: Carol Bentley, B-
27 E-N-T-L-E-Y, Deputy Commissioner.

1 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: Paul
2 Chrisopoulos, C-H-R-I-S-O-P-O-U-L-O-S, Deputy District
3 Attorney, County of Orange.

4 ATTORNEY HALL: Anthony Hall, H-A-L-L, Attorney
5 for Mr. Totten.

6 INMATE TOTTEN: Anthony Totten, T-O-T-T-E-N, H-
7 21049.

8 PRESIDING COMMISSIONER BRYSON: I note for the
9 record, we have two correctional peace officers in the
10 room who are here for security purposes. Commissioner
11 Bentley, is there any confidential in the file, and,
12 if so, will it be used today?

13 DEPUTY COMMISSIONER BENTLEY: There is and we
14 won't be using it.

15 PRESIDING COMMISSIONER BRYSON: All right. I
16 passed the hearing checklist marked Exhibit 1 to your
17 attorney and also to the district attorney to ensure
18 we're all proceeding with the same set of documents.
19 Does the district attorney have all the documents?

20 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: Yes, I
21 do.

22 PRESIDING COMMISSIONER BRYSON: Thank you.
23 Counsel, do you have all the documents?

24 ATTORNEY HALL: Yes, we do.

25 PRESIDING COMMISSIONER BRYSON: Are there any
26 other documents to be submitted?

27 ATTORNEY HALL: There is not at this time.

1 PRESIDING COMMISSIONER BRYSON: All right. Sir,
2 today, you and your attorney signed the document
3 marked Exhibit 2 regarding ADA accommodation, hearing
4 procedures and inmates' rights. Do you have any
5 questions on the procedures and your rights?

6 INMATE TOTTEN: No.

7 PRESIDING COMMISSIONER BRYSON: All right. Now
8 I noticed you're wearing glasses. Are they for both
9 reading and seeing?

10 INMATE TOTTEN: Both reading and seeing.

11 PRESIDING COMMISSIONER BRYSON: All right. Are
12 they the kind that dim in the light?

13 INMATE TOTTEN: Yes.

14 PRESIDING COMMISSIONER BRYSON: That's very
15 handy. That works very well, doesn't it? All right.
16 Do you have any problems hearing?

17 INMATE TOTTEN: No.

18 PRESIDING COMMISSIONER BRYSON: And no problems
19 walking to the hearing? All right. Thank you.
20 Counsel, do you have any comments or concerns
21 regarding the ADA rights or this inmate's ability to
22 participate in this hearing?

23 ATTORNEY HALL: No, I don't.

24 PRESIDING COMMISSIONER BRYSON: Thank you. Are
25 there any preliminarily objections?

26 ATTORNEY HALL: There is none.

27 PRESIDING COMMISSIONER BRYSON: All right. Will

1 the inmate be speaking to the panel today?

2 ATTORNEY HALL: He will speak to the panel,
3 however, he will not be discussing the commitment
4 offense.

5 PRESIDING COMMISSIONER BRYSON: All right. But
6 if you'll speak at all, I'll need to swear you in,
7 sir. The right hand, please, sir. Do you solemnly
8 swear or affirm that the testimony you give at this
9 hearing will be the truth, the whole truth and nothing
10 but the truth?

11 INMATE TOTTEN: Yes.

12 PRESIDING COMMISSIONER BRYSON: Thank you. All
13 right. I will read the facts of the crime into the
14 record from the Court of Appeals, 4th Appellate
15 District, Division III, People v Anthony Lee Totten,
16 Superior Court number C 82571. As to the facts,
17 Totten and Janet had been separated for several
18 months. During one of their attempts to
19 reconciliation, she became pregnant with their third
20 child. She was five months pregnant at the time of
21 the shooting. On October 23rd, 1990, Janet called
22 Totten and asked him to baby-sit the children that
23 night while she worked late. Upset, he came to see
24 her at work telling her he did not have money to feed
25 the children dinner. She gave him money. Later that
26 day, Totten phoned Janet at work and an argument
27 ensued. Janet worried about having -- leaving the

1 children with him. After work, she drove to the baby-
2 sitter's house to pick them up. Totten approached
3 waving papers in front of her saying he was going to
4 file them. He asked for a pen. She handed him a pen
5 and walked away. Totten reached into Janet's car and
6 broke off the blinker knob. When Janet drove away,
7 Totten followed. Janet went to her mother's house
8 where she lived with the children. She parked and
9 went inside. Totten, who had followed in his car,
10 parked walked to her car and deflated the tire.
11 Inside, Janet called the police. Totten followed her
12 into the house and demanded to use the phone calling
13 her names. He said if he did not get the kids that
14 night, he would kill her. On the following day,
15 Totten called Janet and again threatened to kill her.
16 When he pulled up in front of the house, Janet called
17 the police. They advised her to obtain a restraining
18 order. She initiated the proceeding the same day. On
19 the next day, the possession was granted. In the
20 order, Totten's visitation with the children was
21 decreased from two days per week to one, Sunday. In
22 addition, it was provided that visitation would be
23 monitored. Totten was upset about the order. While
24 at court, Totten asked Janet when her next doctor's
25 appointment was scheduled, and she told him it was the
26 following Tuesday. On Sunday, Janet dropped the kids
27 off at Totten's mother's house and arranged to pick

1 them up at 2:00 or 3:00 p.m. because his mother could
2 not stay until 5:00, the end of the scheduled time.
3 Totten became angry at having his visit cut short. On
4 Tuesday, October 30th, Janet went to her scheduled
5 obstetric appointment at Kaiser Medical Center.
6 Following the visit, as she was opening her car door,
7 she came aware of Totten standing behind her. He was
8 holding a long, white box, which he said contained a
9 doll swing for their daughter's birthday. She agreed
10 to allow him to put it in her back seat. After they
11 spoke for a while, Totten told Janet he was working
12 behind the Kaiser facility and asked her for a ride
13 back. He was dressed for work and appeared calm so
14 she agreed. When Janet started the car and looked
15 toward Totten, she saw he was holding a rifle between
16 the seats, which he had taken out of the white box.
17 Janet began screaming and pushing the barrel down. At
18 some point, two shots were fired in the car one of
19 them hitting Totten in the leg. As Janet tried to get
20 out of the car, Totten grabbed her arm and hit her
21 head. When she broke free crying and screaming, she
22 ran toward the medical building. Totten chased her
23 and cut her off. She ran around him, and heard the
24 gun cock and a shell eject. She then fell to the
25 ground hit in the head. While Janet was on the ground
26 face down, Totten walked up to her and nudged her body
27 with his foot. As a result of the injury, Janet lost

1 the hearing in one hear and suffered a broken jaw,
2 which required she have it wired for two and one-half
3 months. This inmate has no priors in his juvenile
4 record or his adult record of arrests and convictions.
5 The incident offense being the only recorded
6 conviction. So, sir, this is such an -- an abhorrent
7 crime based on your history, which is as of no crime,
8 that we're going to try and understand more about you,
9 and about what happened, and -- and so forth today by
10 looking at your personal history. How would you
11 characterize your personal history? Did you -- just
12 your general upbringing, how would you characterize
13 that?

14 INMATE TOTTEN: It was good.

15 PRESIDING COMMISSIONER BRYSON: It was good?

16 INMATE TOTTEN: Yeah. It was just like an
17 average family.

18 PRESIDING COMMISSIONER BRYSON: It was?

19 INMATE TOTTEN: Mm hmm.

20 PRESIDING COMMISSIONER BRYSON: Did you graduate
21 from high school?

22 INMATE TOTTEN: No.

23 PRESIDING COMMISSIONER BRYSON: Why not?

24 INMATE TOTTEN: I went in the tile business with
25 my dad when I was about 16.

26 PRESIDING COMMISSIONER BRYSON: You got really
27 close though. You were in the 11th grade, right?

1 INMATE TOTTEN: Yeah.

2 PRESIDING COMMISSIONER BRYSON: Whose decision
3 was it to quit school-yours or your dads?

4 INMATE TOTTEN: Mine. Mine.

5 PRESIDING COMMISSIONER BRYSON: On what basis
6 did you quit -- quit school then?

7 INMATE TOTTEN: I just got bored with it.

8 PRESIDING COMMISSIONER BRYSON: Did you?

9 INMATE TOTTEN: Yeah.

10 PRESIDING COMMISSIONER BRYSON: What did your
11 parents think about that?

12 INMATE TOTTEN: Well, they tried to get me to go
13 to school, but I just ended up going in the union --
14 joining the union, the tile setter's union.

15 PRESIDING COMMISSIONER BRYSON: I see. Now, you
16 said it was a good, average upbringing. What do you
17 mean by that? Was your --

18 INMATE TOTTEN: It was an upper-class -- a
19 middle, upper-class family.

20 PRESIDING COMMISSIONER BRYSON: Upper-class? Uh
21 huh. Uh huh.

22 INMATE TOTTEN: Yeah. Lived in a nice
23 neighborhood.

24 PRESIDING COMMISSIONER BRYSON: OK. Now,
25 according to the board report dated January of 2004,
26 you referred to your family as having consisted of a
27 great deal of dissension. You characterized your

1 family as having been dysfunctional, and you had
2 trouble understanding what was expected of you by your
3 stepfather. You had trouble reading, which
4 contributed you -- contributed to you being scared and
5 intimidating during your first two weeks in the first
6 grade, and your adopted father drank a lot. Is --
7 now, that --

8 INMATE TOTTEN: Yeah. That -- that kind of --

9 PRESIDING COMMISSIONER BRYSON: -- that's an odd
10 --

11 INMATE TOTTEN: -- you know, as we got older,
12 that kind of, you know, things got better.

13 PRESIDING COMMISSIONER BRYSON: Things got
14 better?

15 INMATE TOTTEN: Yeah.

16 PRESIDING COMMISSIONER BRYSON: I see. Same
17 stepfather?

18 INMATE TOTTEN: Same stepfather.

19 PRESIDING COMMISSIONER BRYSON: But -- but did
20 he ever abuse you or --

21 INMATE TOTTEN: No, not really.

22 PRESIDING COMMISSIONER BRYSON: Did he abuse
23 your mom?

24 INMATE TOTTEN: Yeah.

25 PRESIDING COMMISSIONER BRYSON: In what way?

26 INMATE TOTTEN: He used to beat her up, throw
27 things at her.

1 PRESIDING COMMISSIONER BRYSON: Hmm. What do
2 you think you took from that experience? Do you think
3 that effected you?

4 INMATE TOTTEN: Well, I seen a lot of that. It
5 probably did. He -- he -- he did it a lot to my mom
6 and dad or to my mom I mean.

7 PRESIDING COMMISSIONER BRYSON: Uh huh. And did
8 she just take it or what happened on that?

9 INMATE TOTTEN: She -- she would get him back
10 sometimes.

11 PRESIDING COMMISSIONER BRYSON: Mm hmm. Hmm.
12 You -- you also said that your mom was the glue that
13 held things together, and while she'd occasionally
14 yell and throw things, she was considered the
15 peacemaker. Is she still alive today?

16 INMATE TOTTEN: Yes.

17 PRESIDING COMMISSIONER BRYSON: Do you have a
18 relationship with her?

19 INMATE TOTTEN: Yes. I call her every week.
20 Yeah.

21 PRESIDING COMMISSIONER BRYSON: Do you?

22 INMATE TOTTEN: Yeah. She has cancer now. She
23 just came down with cancer about three years ago.

24 PRESIDING COMMISSIONER BRYSON: OK. Uh huh.
25 All right. Now, you had three children. Have you
26 kept in touch with them?

27 INMATE TOTTEN: No. I haven't seen them in a

1 while.

2 PRESIDING COMMISSIONER BRYSON: OK. OK.

3 INMATE TOTTEN: No one's seen 'em-mom and dad,
4 brothers and sisters. She won't let anybody see 'em.

5 PRESIDING COMMISSIONER BRYSON: I see. OK. How
6 about -- let's see. You -- you have a brother or a
7 sister, is that right?

8 INMATE TOTTEN: Two sisters --

9 PRESIDING COMMISSIONER BRYSON: Two sisters.

10 INMATE TOTTEN: -- and one brother.

11 PRESIDING COMMISSIONER BRYSON: I see. How are
12 they?

13 INMATE TOTTEN: Good.

14 PRESIDING COMMISSIONER BRYSON: All right. They
15 keep in touch with you?

16 INMATE TOTTEN: Sure.

17 PRESIDING COMMISSIONER BRYSON: OK. Nobody else
18 in prison?

19 INMATE TOTTEN: Nope.

20 PRESIDING COMMISSIONER BRYSON: OK.

21 INMATE TOTTEN: Nobody. No. Nobody in our
22 family's been in prison.

23 PRESIDING COMMISSIONER BRYSON: That's -- OK.

24 Now, were you involved with drugs at some point?

25 INMATE TOTTEN: Yeah.

26 PRESIDING COMMISSIONER BRYSON: Methamphetamine?

27 INMATE TOTTEN: Yes.

1 PRESIDING COMMISSIONER BRYSON: Was that your
2 primary drug of choice? How did that come about?
3 Were you -- you weren't in a gang or anything like
4 that, were you?

5 INMATE TOTTEN: No. Heavens no. I was just --
6 just with some friends just introduced it to me at a
7 party and -- and --

8 PRESIDING COMMISSIONER BRYSON: Would you say
9 you were an addict?

10 INMATE TOTTEN: Mostly social. I wasn't doing
11 it all the time, but I did -- I did it a few times a
12 month.

13 PRESIDING COMMISSIONER BRYSON: How do you think
14 it affected you? Do you think it had an affect or
15 not?

16 INMATE TOTTEN: Sure. Any type of drug has an
17 affect on people any time you do it, alcohol or any
18 kind of drugs, yeah.

19 PRESIDING COMMISSIONER BRYSON: What I'm getting
20 at is do you think it -- and without -- I don't know
21 you don't want to talk about the crime, but do you
22 think it played a role in this? Were you -- were you
23 high (indiscernible)

24 INMATE TOTTEN: I was on it, yeah. I was high,
25 yeah. If I wasn't high, I probably wouldn't have --
26 it probably would have never happened.

27 PRESIDING COMMISSIONER BRYSON: So what did it -

1 - how did it change your character to be on meth?

2 INMATE TOTTEN: Well, you stay -- it keeps you
3 up for a long time, and, you know --

4 PRESIDING COMMISSIONER BRYSON: Did it enhance
5 your aggression level do you think at all?

6 INMATE TOTTEN: Probably, yeah. I would say it
7 did, yes. (indiscernible)

8 PRESIDING COMMISSIONER BRYSON: Could you see
9 that -- "see that" from inside your own self at the
10 time? Could you -- could you feel -- did you feel
11 empowered whether you were on meth, or, you know, how
12 did you -- you feel?

13 INMATE TOTTEN: Sure. Sure. That's what it
14 does to you, yeah. That's what it does to you.

15 PRESIDING COMMISSIONER BRYSON: I've never done
16 meth so I just don't know so I ask, you know, what --

17 INMATE TOTTEN: Sure. I -- I've read up on it -
18 -

19 PRESIDING COMMISSIONER BRYSON: Uh huh.

20 INMATE TOTTEN: -- does, you know, it's very
21 harmful to you.

22 PRESIDING COMMISSIONER BRYSON: Yeah, it
23 certainly is. So do you think it had any residual
24 effects or were, you know, in --

25 INMATE TOTTEN: On -- on -- on the crime?

26 PRESIDING COMMISSIONER BRYSON: No. On -- on
27 you, the -- the -- the -- the methamphetamine.

1 Sometimes it really messes people up.

2 INMATE TOTTEN: I didn't do it for a long time
3 so, thank God, you know, it wasn't a lifetime thing.
4 It was a short-term.

5 PRESIDING COMMISSIONER BRYSON: Uh huh. Have
6 you done any inside here?

7 INMATE TOTTEN: No. No. No. Nothing.

8 PRESIDING COMMISSIONER BRYSON: Mm hmm.

9 INMATE TOTTEN: I've been clean in here for 16
10 years now.

11 PRESIDING COMMISSIONER BRYSON: Right. Right.
12 Is there anything else about your -- your upbringing
13 that you want to tell us that will help us understand
14 you better in here? OK. Well, maybe if you -- if you
15 think of anything, you're welcome to bring it up.

16 INMATE TOTTEN: Well, I was in the union for 14
17 years before I came in here, a tile setter in the
18 marble union.

19 PRESIDING COMMISSIONER BRYSON: I see.

20 INMATE TOTTEN: So I was still working before I
21 came in here.

22 PRESIDING COMMISSIONER BRYSON: Oh, yeah?

23 INMATE TOTTEN: I think a little bit in the 90s
24 before this happened, things were kind of --
25 construction kind of went downhill and stuff so it was
26 kind of -- made it kind of rough there for a while.

27 PRESIDING COMMISSIONER BRYSON: It's certainly

1 back up today.

2 INMATE TOTTEN: Yeah. Yeah.

3 PRESIDING COMMISSIONER BRYSON: That's for sure.

4 INMATE TOTTEN: If I was out there the last 15
5 years, I would've done pretty good in construction.

6 PRESIDING COMMISSIONER BRYSON: Yeah. Do you
7 feel that you'd be pretty current now with --

8 INMATE TOTTEN: Oh, yeah. Oh, yeah.

9 PRESIDING COMMISSIONER BRYSON: Mm hmm.

10 INMATE TOTTEN: I've gotten really good reports
11 on everything I've done in here.

12 PRESIDING COMMISSIONER BRYSON: Uh huh.

13 INMATE TOTTEN: I did some tile work up in
14 Susanville for -- I was up there for about six or
15 seven years doing tile work up there origin that
16 institution.

17 PRESIDING COMMISSIONER BRYSON: I see. I'm
18 going to give you an opportunity at this -- at this
19 time, and, again, you can -- you'll get more chances
20 to speak and -- and so forth, but can you give us a
21 general feeling of how do you feel about the crime
22 now? You know --

23 INMATE TOTTEN: Well, I -- it should've never
24 happened. I don't know what I was thinking. I was
25 just -- I was on meth at the time, and -- and, like I
26 said, if I wasn't on meth, I don't think it would've
27 ever happened 'cuz I don't think I -- I could -- I

1 just don't think I could've done something like that
2 if I wasn't on drugs.

3 PRESIDING COMMISSIONER BRYSON: OK.

4 Commissioner, do you have any questions of this inmate
5 at this point? All right. Well, if you'll turn your
6 attention to Commissioner Bentley, we'll go to post-
7 conviction factors.

8 DEPUTY COMMISSIONER BENTLEY: Your last hearing
9 was June 29th of 2004?

10 INMATE TOTTEN: Yes.

11 DEPUTY COMMISSIONER BENTLEY: OK. You came into
12 the Department of Corrections in January of '92, and
13 you've been here at CTF since March of 2000.

14 INMATE TOTTEN: Yes.

15 DEPUTY COMMISSIONER BENTLEY: You've got a
16 classification score of 19 and you've never received
17 any 115s.

18 INMATE TOTTEN: Right.

19 DEPUTY COMMISSIONER BENTLEY: And you've got two
20 counseling chronos, and the last one, that was some
21 sort of misuse of the telephone, and that was in '95.
22 You've completed vocational landscaping.

23 INMATE TOTTEN: Yes, ma'am.

24 DEPUTY COMMISSIONER BENTLEY: And you've got a
25 lot of -- you've got a lot of trade chronos about
26 that. They said they retained you on a job to finish
27 a project that you'd begun working on, and they just

1 indicate what a good worker -- an excellent worker you
2 -- you were, and you -- your work assignments into
3 last year, you're a machine operator.

4 INMATE TOTTEN: Yes.

5 DEPUTY COMMISSIONER BENTLEY: Exactly what do
6 you do?

7 INMATE TOTTEN: I straighten lumber when it
8 comes into the shop for furniture.

9 DEPUTY COMMISSIONER BENTLEY: Oh, OK.

10 INMATE TOTTEN: It comes in all crooked, and I
11 straighten it all out, and then send it on to the next
12 shop for --

13 DEPUTY COMMISSIONER BENTLEY: OK.

14 INMATE TOTTEN: -- they build furniture with it.

15 DEPUTY COMMISSIONER BENTLEY: OK. And you've
16 been getting exceptional to above average work
17 reports, and you've been in that for -- well, all this
18 past period of time.

19 INMATE TOTTEN: Yes.

20 DEPUTY COMMISSIONER BENTLEY: For quite a while.
21 And you started out educationally -- I noticed in --
22 in '01 you took a test, and your reading level was at
23 4.1.

24 INMATE TOTTEN: Yeah. I didn't have any glasses
25 at the time.

26 DEPUTY COMMISSIONER BENTLEY: Oh, OK. Well,
27 that makes sense.

1 INMATE TOTTEN: I had a chrono in there about
2 that.

3 DEPUTY COMMISSIONER BENTLEY: Oh, OK. I didn't
4 see that one. In '02 you had a grade point level of
5 7.2, but in '93 you got your high school equivalency.

6 INMATE TOTTEN: '93, yes.

7 DEPUTY COMMISSIONER BENTLEY: Yeah. OK. I saw
8 that in the file. And then you've been taking some
9 courses on AIDS prevention, and hepatitis prevention.

10 INMATE TOTTEN: Right.

11 DEPUTY COMMISSIONER BENTLEY: And you got
12 involved in self-help in '97.

13 INMATE TOTTEN: Right.

14 DEPUTY COMMISSIONER BENTLEY: Sounds like when
15 you initially came in, I was reviewing your reception
16 record where they go over and they ask you all these
17 questions, that you really claimed you didn't have any
18 kind of problems with any drugs or alcohol.

19 INMATE TOTTEN: Right.

20 DEPUTY COMMISSIONER BENTLEY: But when you
21 reflect back on it now, it seems to me -- 'cuz meth is
22 such an addictive -- the most --

23 INMATE TOTTEN: Right.

24 DEPUTY COMMISSIONER BENTLEY: -- addictive drug
25 that you were heading right down that line.

26 INMATE TOTTEN: Right.

27 DEPUTY COMMISSIONER BENTLEY: Yeah. OK. And so

1 you've been consistently involved in that since '97,
2 and what have you learned?

3 INMATE TOTTEN: I've learned to take
4 responsibility for your actions.

5 DEPUTY COMMISSIONER BENTLEY: Mm hmm.

6 INMATE TOTTEN: I'm -- I'm willing to make a
7 list of all the people I've harmed and make amends to
8 'em.

9 DEPUTY COMMISSIONER BENTLEY: Have you done
10 that?

11 INMATE TOTTEN: Sure.

12 DEPUTY COMMISSIONER BENTLEY: OK. You said
13 you're willing to do that, but --

14 INMATE TOTTEN: Sure.

15 DEPUTY COMMISSIONER BENTLEY: OK. Who -- who --
16 who have you harmed?

17 INMATE TOTTEN: Well, I harmed my wife, and my
18 children, and my family, and -- and every day I call
19 'em, I try to make amends to 'em, you know? I've
20 wrote a couple letters in there, too to the -- to
21 Janet and the kids. I don't -- I don't know if you
22 seen those in there.

23 DEPUTY COMMISSIONER BENTLEY: And -- and they
24 haven't been sent though, very that?

25 INMATE TOTTEN: No.

26 DEPUTY COMMISSIONER BENTLEY: All right. What
27 do you do in your spare time?

1 INMATE TOTTEN: Exercise.

2 DEPUTY COMMISSIONER BENTLEY: Mm hmm.

3 INMATE TOTTEN: I make peanut butter cups for
4 the people in the -- in the dorm where I live, and I
5 talk to younger -- younger people in the building
6 about the effects of drugs and what it did to me, some
7 of 'em -- some of 'em that will listen, but --

8 DEPUTY COMMISSIONER BENTLEY: Yeah, right.

9 INMATE TOTTEN: -- there's a few of them that
10 don't -- a lot of 'em that don't.

11 DEPUTY COMMISSIONER BENTLEY: Yeah.

12 INMATE TOTTEN: I explain to 'em about me not
13 having seen my kids all this time 'cuz of the effects
14 of drugs, basically.

15 DEPUTY COMMISSIONER BENTLEY: Yeah. So you've
16 lost track of your -- of your children?

17 INMATE TOTTEN: Yeah. I -- I don't have any
18 contact with 'em at all.

19 DEPUTY COMMISSIONER BENTLEY: All right. But
20 you get visits. Do your parents come?

21 INMATE TOTTEN: My mom has cancer so she hasn't
22 -- I haven't seen her in a couple years.

23 DEPUTY COMMISSIONER BENTLEY: Oh, OK.

24 INMATE TOTTEN: She's been going through
25 chemotherapy, and just kind of busy. It's been kind
26 of hectic. Last time she came to see me, she was
27 sitting out there for like five hours before she could

1 come in here and see me.

2 DEPUTY COMMISSIONER BENTLEY: Oh. What else
3 would you like to tell me about what you've been doing
4 in prison?

5 INMATE TOTTEN: Well, I keep busy. I work. I
6 work a lot of overtime.

7 DEPUTY COMMISSIONER BENTLEY: OK.

8 INMATE TOTTEN: So I try to -- try to keep busy
9 at work. I try to average anywhere -- I average
10 anywhere from 40 to 50 hours a week at work so that
11 takes a lot of time my.

12 DEPUTY COMMISSIONER BENTLEY: Do you enjoy this
13 work that you're doing?

14 INMATE TOTTEN: Oh, yeah. I love it.

15 DEPUTY COMMISSIONER BENTLEY: OK.

16 INMATE TOTTEN: It's really good.

17 DEPUTY COMMISSIONER BENTLEY: What's your pay
18 number?

19 INMATE TOTTEN: I'm -- I'm an A number, highest
20 you can be paid.

21 DEPUTY COMMISSIONER BENTLEY: All right. Your
22 psychological report was done for this hearing -- was
23 done for prior hearings, but it's still appropriate to
24 use in this hearing by R. Talbot, and it's dated 11/19
25 of 2003. It goes through your history, and -- which
26 Commissioner Bryson has covered, and where you are
27 marital history and climate. It talks about your

1 substance abuse history. It says that you told the
2 doctor you've used marijuana briefly about the age of
3 15. You didn't use any other drugs for about 10 years
4 after that until you started using methamphetamine.
5 It said you began using methamphetamine over the
6 weekends for about three years until you committed
7 your life crime. Was it just on the weekends?

8 INMATE TOTTEN: Sometimes when I would hang out
9 on the weekends. Sometimes it was just, you know, it
10 was just friends getting together, you know, water
11 skiing, or at the, you know, beach, or --

12 DEPUTY COMMISSIONER BENTLEY: So all the friends
13 would use it, too?

14 INMATE TOTTEN: Oh, yeah.

15 DEPUTY COMMISSIONER BENTLEY: Yeah. That is
16 such terrible stuff.

17 INMATE TOTTEN: It's terrible stuff.

18 DEPUTY COMMISSIONER BENTLEY: Yeah.

19 INMATE TOTTEN: Terrible.

20 DEPUTY COMMISSIONER BENTLEY: I can't fathom why
21 just to have fun that you'd want to use that stuff,
22 and you've seen -- they probably haven't seen it, but
23 you've seen what it does to people's teeth.

24 INMATE TOTTEN: I've seen what it does to
25 people's teeth. I got good teeth, thank God.

26 DEPUTY COMMISSIONER BENTLEY: Yeah.

27 INMATE TOTTEN: I didn't do it for very long.

1 DEPUTY COMMISSIONER BENTLEY: And what it does
2 to some of them mentally.

3 INMATE TOTTEN: Mentally.

4 DEPUTY COMMISSIONER BENTLEY: You know, you --
5 you were having some mental health issues over it,
6 right?

7 INMATE TOTTEN: Over it, right.

8 DEPUTY COMMISSIONER BENTLEY: Suicidal and stuff
9 like that?

10 INMATE TOTTEN: It was depression, yeah.

11 DEPUTY COMMISSIONER BENTLEY: Yeah. And,
12 fortunately with you, you didn't do it long enough for
13 that to last. It's get to the point even when you're
14 off it for years, you still have that mental -- and
15 some severe mental damage.. OK. Under psychiatric and
16 medical history, it says besides your methamphetamine
17 dependence, it indicated that as consequences of your
18 drug use, you -- you -- you developed suicidal
19 tendencies, and it says you no longer feel that way.
20 It's talking about your parole plans, which the
21 Commissioner's going to cover very shortly, and then
22 under current diagnostic impressions, we have
23 methamphetamine dependence in remission in a
24 controlled environment, and it ruled out ADHD, which
25 other doctors have -- have included in there, and then
26 it goes into the life crime, and since you didn't want
27 to discuss it today, I just kind of wanted to read

1 this into the record. You stated at the time of the
2 crime, you had a methamphetamine problem for a few
3 years. Though you'd been married for seven years, you
4 were also having an affair with another woman, and his
5 wife found out and sued for divorce taking the
6 children with her. It says he was under considerable
7 stress, and after having a series of anger-filled --
8 filled meetings with her, he arranged to meet her
9 again, this time at a hospital where he was having a
10 checkup. He said he hoped to show her how distraught
11 he was so that she would have some sympathy for him.
12 Leading her, he escorted her to her car where he took
13 out a rifle he'd placed in a box and a struggle soon
14 ensued. During the struggle, he was shot in the leg
15 and then he followed her out of the car as she attempt
16 today run away, and he shot her. She recovered, and
17 you went to prison. In discussing the crime, you went
18 on to say you that I had not intended to kill my wife.
19 If I had wanted to kill her, I would have. I was high
20 on drugs, and further discussion of the crime, he said
21 he had done a bad thing. Inmate -- the inmate then
22 went on to discuss some of the losses he's experienced
23 since he's been in prison. He said he's lost a
24 grandmother who has died since he's been in prison.
25 Inmate Totten said he also missed his children. He
26 mentioned his daughter, at this point, saying he'd
27 like to talk to her. He also said he exercised bad

1 judgment and was sitting in prison because of it. He
2 finished by saying that he was remorseful for his
3 actions. He had some of the right answers for my
4 questions and seemed to be on the road to getting his
5 thinking straight. However, I had to work on getting
6 him to talk about his thinking about how his crime has
7 affected others. He seemed to be more able to talk
8 about its effect upon him than upon others as if he
9 was not quite thought through the consequences upon
10 others. I also believe that he needs to work more on
11 the effect of his crime on his former wife and
12 children. In short, he seemed, to this interviewer,
13 to live in a still too self-centered world. And then
14 he goes on on Assessment of Dangerousness, he talks
15 about your good disciplinary history, and it says that
16 this time, however, it seems less clear he will be a
17 low risk to the free community. In particular, he's
18 still seemingly self-centered view of his actions
19 suggestion that his interpersonal maturity is [SPWHA]
20 limited. If he really, truly suffers from ADHA as he
21 has stated, he may be somewhat impulsive and will need
22 help dealing with his disorder as well. It must be
23 said that comparing those statements with those made
24 to his earlier interview, he seems to have advanced
25 somewhat in the understanding and appreciation of
26 others as people, but there still is room for growth
27 and needed growth will occur. Finally, he must

1 continue to attend AA and NA classes if he is released
2 as it's an important source of understanding and
3 support. In conjunction with the foregoing, he also
4 needs to be monitored regularly to see if he's
5 maintaining his abstinence. Under Clinical
6 Observation, it says your on the road to becoming a --
7 a pentanant human being. He has further to go,
8 however, before it is reasonable that he is released.
9 So, with that, I'll return to the Chair.

10 PRESIDING COMMISSIONER BRYSON: All right.
11 Thank you. As to your parole plans, Mr. Totten, were
12 you still planning to live with your parents in San
13 Juan Capistrano?

14 INMATE TOTTON: Yes.

15 PRESIDING COMMISSIONER BRYSON: OK. Now, did
16 you have any letters today that -- that confirm that?

17 ATTORNEY HALL: Only what's in the file,
18 Commissioner, there.

19 PRESIDING COMMISSIONER BRYSON: OK. Let me
20 check. All right. We do have a letter from your
21 parents, which is dated April 23rd, 2006, and this is
22 written by Jason and Gana, G-A-N-A, Totten, T-O-T-T-E-
23 N, on behalf of their son. The time has come to let
24 him be a productive person on the outside. We, the
25 family, and myself will assist him in the transition.
26 We have a vehicle for him and a place to live. We'll
27 give him love and support. We feel Tony has paid for

1 his actions, and that he has changed, and will not let
2 us down. All right. And then we have also a letter
3 from Silvia, S-I-L-V-I-A, Construction, and this is
4 dated May 3rd of 2006, from Perry, P-E-R-R-Y, J.
5 Totten, Superintendent, your brother, and he says I've
6 worked for Silvia Construction for the past 15 years.
7 There are many opportunities in the construction
8 field. I can put Anthony to work for me in
9 construction upon his release. There are many areas
10 where Anthony could use his skills and be successful.
11 So it does appear that you have parole plans. Now,
12 this is located in Rancho Cucamonga. Would that be
13 within commute distance?

14 INMATE TOTTEN: Yes.

15 PRESIDING COMMISSIONER BRYSON: OK.

16 INMATE TOTTEN: He works all over Orange County
17 and L.A. County.

18 PRESIDING COMMISSIONER BRYSON: I see. OK. So
19 you have a good relationship with your brother?

20 INMATE TOTTEN: Sure. Sure.

21 PRESIDING COMMISSIONER BRYSON: OK. All right.
22 Is there anything I've missed, counsel?

23 ATTORNEY HALL: I think that's everything.

24 PRESIDING COMMISSIONER BRYSON: I've sent out
25 3042 notices. Those notices go to agencies having a
26 direct interest in your case. We have a July 3rd,
27 2006, response from the City of Huntington Beach

1 Police Department, and this is written by Sergeant D.
2 Dierking, that's D-I-E-R-K-I-N-G, Crimes Against
3 Persons Unit, and on behalf of Kenneth W. Small,
4 common spelling, Chief Police. On October 30th, 1990,
5 at approximately 10:30 a.m., the victim Janet Totten,
6 who was five months pregnant, exited the Kaiser
7 medical office in Huntington Beach. She was contacted
8 by her husband, Anthony Totten, who was carrying a
9 white box. He told her the box contained a present
10 for their soon-to-be five-year old daughter. Anthony
11 convinced, who had recently obtained a restraining
12 order against him to drive him to his nearby car.
13 Once inside her car, they argued. An [THOPB]--opened
14 the box, took out a loaded .22 caliber rifle he had
15 concealed in it. Janet realized that Anthony was
16 going to kill her so she grabbed the gun attempting to
17 wrestle it from him. She honked her car horn and
18 yelled. She opened her car door and took off running.
19 She saw her husband, Anthony chasing her with the gun.
20 She yelled and screamed for help as he pursued her.
21 He caught up with her shooting her in the back of the
22 head. She fell to the ground. Anthony fled the
23 scene. He turned himself in at the Orange Police
24 Department the next day with his attorney. The
25 investigation revealed that Anthony had purchased the
26 gun several days before he had attempted to kill his
27 wife. Anthony shot himself in the leg in an effort to

1 argue the incident was actually self-defense. Anthony
2 Totten is a dangerous man as he demonstrated when he
3 chased down his pregnant wife shooting her in the head
4 in an effort to kill her the Huntington Beach Police
5 Department opposes any type of parole or leniency for
6 Anthony Totten. We also have a representative of the
7 Orange County District Attorney's Office present who
8 will have the opportunity to make a statement
9 regarding parole suitability prior to the conclusion
10 of this hearing. Commissioner Bentley, do you have
11 any questions of this inmate?

12 DEPUTY COMMISSIONER BENTLEY: Yeah. I just have
13 one because my other questions were related to the
14 crime. But I just noticed on his intake evaluation
15 that you put down your religion as b, and then small
16 a, capital B and then and b.

17 INMATE TOTTEN: What? Hmm.

18 DEPUTY COMMISSIONER BENTLEY: I -- I just
19 wondered what it was, but you don't -- you don't have
20 a clue either. I don't know. Maybe they just typed
21 in some letters. OK. That's all I had.

22 PRESIDING COMMISSIONER BRYSON: All right. OK.
23 Does the district attorney have questions of this
24 inmate?

25 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: Yes. I
26 would like the commissioner to ask the inmate prior to
27 committing this commitment offense, how many times had

1 he physically abused his wife.

2 INMATE TOTTEN: I don't know. I can't answer
3 that.

4 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: What?

5 PRESIDING COMMISSIONER BRYSON: He can't answer
6 that. He doesn't know.

7 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: OK. A
8 follow-up to that question, does he recall a time on
9 May 12th, 1990, when the victim tried calling the
10 police and the inmate told her not to touch the
11 telephone, and then he punched her in the mouth
12 knocking her to the ground and breaking her front
13 teeth? Does he recall that incident?

14 INMATE TOTTEN: No.

15 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: I have
16 no other questions.

17 PRESIDING COMMISSIONER BRYSON: All right.
18 Counsel, do you have any questions of this inmate?

19 ATTORNEY HALL: Yes. Thank you. Mr. Totten,
20 how do you feel about the harm you caused your wife
21 and children?

22 INMATE TOTTEN: I feel bad. Nobody should ever
23 go through something like that.

24 ATTORNEY HALL: Is this something you believe
25 you could ever do again to any other individual?

26 INMATE TOTTEN: No, never.

27 ATTORNEY HALL: And do you have long-term plans

1 to continue with substance abuse prevention?

2 INMATE TOTTEN: Sure. I had a -- a sponsor, an
3 NA and AA sponsor from the street. I had 'em put a
4 letter in there from my last hearing. I wasn't able
5 to contact him.

6 ATTORNEY HALL: Now Doctor Talbo -- Talbot in
7 his 2003 evaluation indicated that he felt you needed
8 additional time to demonstrate that or to,
9 essentially, confirm in his mind that you pose a low
10 risk of harm to the community. How do you feel about
11 that report and the gains that you have made over the
12 years, and, in particular, since November 2003?

13 INMATE TOTTEN: Well, I've done 33 more months
14 since that report was written so -- and I did go back
15 in and talk to Doctor Talbot about that report about
16 six times prior to him writing that, and that man
17 wouldn't -- wouldn't even look at me in the eyes. He
18 would look out the window and wouldn't even talk to me
19 about that report he wrote so I don't know -- he went
20 to his boss and was trying to get some things fixed on
21 this, but his boss said it was too late and there was
22 nothing he could do about it. So I don't know what
23 that was all about.

24 ATTORNEY HALL: Tell -- tell me what you believe
25 you have done over the last 33 months that would
26 demonstrate that even if he -- let's -- just for the
27 sake of argument, his assessment was correct, how do

1 you think that in the 33 months that what you have
2 done will improve that assessment?

3 INMATE TOTTEN: Well, I've remained disciplinary
4 free my entire incarceration. I've done every program
5 that the -- everybody's asked me to do in the last 15
6 years that I've been in here.

7 ATTORNEY HALL: And how has that affected you in
8 terms of your outlook, in terms of --

9 INMATE TOTTEN: It makes me feel good that I've
10 accomplished something while I'm in here, and by
11 showing everybody that -- that I can be a productive
12 citizen in society. Some of the things you go through
13 in here, it's -- it's -- it's tough in here sometimes,
14 you know, so that proves right there that you can -- I
15 think you can survive out in the street.

16 ATTORNEY HALL: Thank you. No further
17 questions.

18 PRESIDING COMMISSIONER BRYSON: All right.
19 Thank you. And I'd like to invite the district
20 attorney to make a closing statement.

21 DEPUTY DISTRICT ATTORNEY CHRISOPOULOS: Thank
22 you. In looking at this offense, it is so cruel and
23 callous that one can imagine trying to gun after one's
24 wife, especially in light of the fact that she is the
25 mother of two of his children at the time, she was
26 pregnant -- five-months pregnant at the time of this
27 attempted murder, and, yet, this inmate had a

1 systematic plan to go after her. In looking at the
2 facts of the case, as stated in the probation report,
3 these first threats towards her life came
4 approximately one week before on October 23rd of 1990,
5 when he showed up at the victim's mother's house
6 threatening to kill her, followed by the next day,
7 October 24th, another threat was made to the victim,
8 which led to the victim getting a restraining order
9 against the inmate. We have the fact that this
10 particular weapon was purchased three or four days
11 before this particular crime. It was a bolt-action
12 rifle. The facts as listened -- listed in the
13 probation report, as far as his statements -- I know
14 the inmate didn't speak about the crime today, but in
15 looking at his statement to the probation officer back
16 when he was convicted of this charge, he stated that
17 the gun just went off. He chased after her and it
18 just went off. In looking at the inmate's statement
19 to the psychologist in the 2003 report, he continues
20 to state he did not intend to kill her, and he tell us
21 today that when he tried confronting the psychologist,
22 the psychologist would not even look at the inmate.
23 What is clear is that the jury did find him guilty of
24 intending to kill his wife. In looking at the facts
25 of crime, and I think it's important -- I know the
26 commissioner read part of the appellate opinion, but
27 in looking further on in the appellate opinion, I'm

1 going to read a couple paragraphs, I think it's
2 important for the record to show that this was a
3 planned execution of his wife. The appellate report
4 reads, beginning on page 5, "This is not a close case.
5 Totten was angry with his wife over the issues of
6 visitation. One week prior to the shooting, he had
7 threatened to kill her and told her, Janet, you are
8 dead. On the day of the restraining order and limited
9 visitation order were obtained, he confirmed with
10 Janet the date of her next obstetrics appointment.
11 Three days prior to the shooting, he purchased a
12 rifle. At some point, he spray painted the box that
13 would contain it presumably in order to get close to
14 Janet with it. He loaded the rifle with seven bullets
15 in the magazine. On the day of the shooting, he
16 parked his truck equipped with a police scanner behind
17 the medical center so that Janet would not see it and
18 used a ruse to place the box inside the car and to
19 insinuate himself into the front seat. After Janet
20 escaped from the car, he ran after her, cut her off
21 and when she evaded him again, he stopped, cocked the
22 rifle, aimed and shot her. Finally, he walked up to
23 her and nudged her body with his foot making sure she
24 was hit." It is clear by all facts that this was a
25 planned execution of his wife, and the fact that in
26 2003 he continues to maintain that he did not intend
27 on harming her, flies in the face of all the evidence,

1 which the jury considered. The People feel that in
2 order for him to show some sort of insight into the
3 crime, he needs to come forward and be to be more
4 forthright into his responsibility into his crime.
5 This is further acknowledged in the psyche report of
6 2003 where the psychologist talks about how this
7 individual continues to be self-centered. He has
8 limited interpersonal maturity. He has further to go.
9 This is from the most recent psyche report. And,
10 finally, I would like to end with the victim's
11 statement as she presented to the probation department
12 in the probation officer's report on page 11. "I think
13 Tony should go to prison for as long as possible. He
14 doesn't care what he does or who he hurts. He thinks
15 he should be allowed to do anything he wants and gets
16 away with it. I remain fearful of him. He'll do it
17 again. If he gets a slap on the hand, it's like
18 giving him permission to go out, and buy a gun and do
19 it again. He has no remorse for what he has done.
20 It's like a big joke. My brother, Tim, saw him
21 laughing and joking with his mother and girlfriend
22 right after he was found guilty. He has been found
23 guilty of something and he should serve a sentence.
24 I've been in hiding for over a year because he's been
25 out of custody." And in looking at the victim's
26 injury, she is living now with a permanent hearing
27 loss to her left ear. She has permanent restriction

1 of her jaw movement. She has permanent loss of
2 feeling to her upper left teeth. All of these actions
3 were because of this inmate, and this inmate has much
4 more to go to reflect upon the crime, to reflect upon
5 his maturity, and for all these reasons, the People
6 are asking for a two-year denial of parole. Thank
7 you.

8 PRESIDING COMMISSIONER BRYSON: Thank you,
9 counselor. All right. Counselor, would you like now
10 to make the closing statement?

11 ATTORNEY HALL: Yes, Commissioner, but if I
12 could have just a moment to speak to ask my client a
13 question. The facts as read into the record by the
14 deputy district attorney, leaves out one important
15 thing, which is not contained in the appellate
16 transcript and that is the fact that even after Mr.
17 Totten was convicted of this crime, he remained on
18 bail until the his sentence. Again, Mr. Totten never
19 denies the crime. He does not deny the crime. I
20 don't think that this forum is the proper place to try
21 or attempt to determine his guilt -- guilt or
22 innocence. This panel clearly has to accept the fact
23 of conviction, and in choosing in not to discuss the
24 crime, Mr. Totten is merely exercising his right not
25 to do so. I think it would not be productive for Mr.
26 Totten to sit here and try to respond to the -- all
27 the nuances of -- of this crime. It's suffices that

1 he takes responsibility for it, and I think that's all
2 that should be required of him. He should not have to
3 dispute every contention made by the victim in this
4 case, and it would not serve any productive purpose to
5 do that. Importantly, he was convicted. There's no
6 denying that it was a horrific crime. There's no
7 denying that his ex-wife suffered physically, and
8 emotionally and continues to suffer, but that's not
9 the criteria for this panel to decide whether Mr.
10 Totten has -- has -- has advanced to the point that he
11 can be found suitable for parole or not. Certainly,
12 it is a factor, but it's not the only factor. There's
13 many more factors, which Mr. Totten and his record has
14 demonstrated would certainly establish that he should
15 be found suitable for parole. Firstly, the
16 determination is whether he would pose an unreasonable
17 risk of harm to the community should he be paroled,
18 and the record, when properly examined clearly
19 demonstrates that he would not pose a risk.
20 Certainly, at the time of this crime, Mr. Totten was
21 under going significant stress in his life. There was
22 the stress -- emotional stress as a result of the
23 family discord between himself, and his wife and his
24 children, and given the significant loss of the
25 children of their father, and given the pain and the
26 hardship that Mrs. -- the former Mrs. Totten
27 experienced, certainly, this is not something my

1 client would ever want to visit upon her again or
2 anyone in the community. Clearly, he has learned from
3 that gross misjudgment on his part. Clearly, he's
4 learned that the use of drugs really significantly
5 impaired his judgment and, certainly, heightened the
6 stress that he was undergoing with his family discord,
7 and, certainly, that's not something that would an
8 again. With respect to Doctor Talbot's evaluation,
9 and back in November of 2003, when Doctor Totten [sic]
10 indicated that he felt that Mr. Totten needed some
11 more time, we believe that 33 months have passed,
12 which -- in which my client, clearly, has continued to
13 demonstrate the adherence of the rules of the
14 institution. He has continued to work productively.
15 He has continued to participate in self-help. He's
16 continued to show respect to institutional staff and
17 his peers, and he has continued to remain discipline
18 free. So we believe that this psychological
19 evaluation, certainly, while we contend that it -- the
20 conclusion of Doctor Talbot then that Mr. Totten
21 needed more time, while we don't agree with it, we --
22 we contend that even if Doctor Totten -- Doctor Talbot
23 was -- was correct in his assessment that Mr. Totten
24 needed more time to continue to demonstrate that he
25 would be safe if released into the community, that he
26 has, clearly, demonstrated that. We know that Mr.
27 Totten has a job offer from his brother in a field --